Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1174
(Patron – Obenshain)

LD#: 13101623 **Date:** 12/19/2012

Topic: Computer fraud

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000*
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** Cannot be determined
- **Juvenile Detention Facilities:** Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-152.2, 18.2-152.3, 18.2-152.7, 18.2-152.7:1, and 18.2-152.8 of the Computer Crimes Act (Article 7.1 of Chapter 5 of Title 18.2). It expands the definitions of several computer related crimes to include offenses committed by using other types of electronic media such as a cellular telephone or a tablet computer.

The proposal amends § 18.2-152.2 to define an "electronic device" as an electronic or electrical device that may be used to do any one or more of the following:

- conduct oral, written, or visual communication;
- place or receive a telephone call;
- send or read an electronic mail message or text message;
- look at pictures;
- read a book or other written material;
- play a game;
- navigate the Internet;
- navigate the physical world;
- play, view, or listen to a video or a television broadcast;
- play or listen to a radio broadcast other than a radio broadcast by a railroad;
- play or listen to music; or,
- execute a computational function.

It then expands the definitions of computer fraud (§18.2-152.3), computer trespass (§18.2-152.7), and harassment by computer (§18.2-152.7:1) to include offenses committed by using an electronic device as defined in § 18.2-152.2. The proposal also amends § 18.2-152.8 such that personal property subject to embezzlement, larceny, or receiving stolen goods includes financial instruments or computer data which

can be read, transmitted, or stored on an electronic device. The proposal therefore affects crimes described in §§ 18.2-95, 18.2-96, 18.2-108, and 18.2-111 of the *Code of Virginia*.

The Computer Crimes Act covers crimes including computer fraud (§ 18.2-152.3), computer trespass (§ 18.2-152.7), and harassment by computer (§ 18.2-152.7:1). Computer fraud under § 18.2-152.3 is a Class 1 misdemeanor; however, offenses involving property worth at least $200 are Class 5 felonies, punishable by a term of imprisonment from one to ten years. Unlawful computer trespass under § 18.2-152.7 is a Class 6 felony (1-5 years), while malicious computer trespass under the same section is a Class 3 felony (5-20 years). Harassment by computer under § 18.2-152.7:1 is punishable as a Class 1 misdemeanor.

Analysis:

The Circuit Court Automated Information System (CAIS) database for fiscal year (FY) 2011 and FY2012 indicates that six offenders were convicted of felony computer fraud or computer trespass as the most serious offense in the case. Two offenders were convicted of computer fraud to obtain property or services valued at $200 or more by false pretenses; one received no incarceration and the other was sentenced to a local-responsible (jail) term of six months. Three offenders were convicted of using a computer to commit larceny of property valued at $200 or more; two of these offenders received no incarceration and the third was sentenced to a state-responsible (prison) term of one year. One offender was convicted of unlawful computer trespass under § 18.2-152.7 and this individual did not receive an active term of incarceration.

According to fiscal year 2011 and 2012 General District Court Automated Information System (CAIS) data, 72 offenders were convicted of a Class 1 misdemeanor involving computer fraud under § 18.2-152.3 or computer harassment under § 18.2-152.7:1. Of these, 20 offenders (27.8%) were given a jail term, with a median sentence of just under one month. The remaining 72.2% were not given an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the definitions of computer fraud, computer trespass, computer harassment, and personal property subject to embezzlement by an electronic device for purposes of the Computer Crimes Act. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal cannot be quantified.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be estimated, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions under the Computer Crimes Act are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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